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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,282	03/23/2004	Hisanori Yokura	03-042	1853
23400	7590	07/27/2005	EXAMINER	
POSZ LAW GROUP, PLC 12040 SOUTH LAKES DRIVE SUITE 101 RESTON, VA 20191			TANINGCO, MARCUS H	
			ART UNIT	PAPER NUMBER
			2878	

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

gm

<b>Office Action Summary</b>	Application No. 10/806,282	Applicant(s) YOKURA ET AL.	
	Examiner Marcus H. Taningco	Art Unit 2878	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toshiyuki (JP 9184803) in view of Paritsky et al. (US 6,462,808)

Re claim 1, Toshiyuki discloses a gas detection device comprising: a light source 4; a photodetector 5; a package for housing the light source 4 and photodetector 5 (Fig. 1); a reflector mirror 2 wherein the package houses all of the light source 4 and photodetector 5, and the photodetector 5 detects light absorption by gas provided in a space between the reflector mirror 2, the light source 4 and the photodetector 5 (Abs.). Toshiyuki fails, however, to specify a shield. Paritsky discloses a sensor (Fig. 2) comprising a partition 20 arranged between a light

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source 4 and a detector 18 such that an inner space is partially sectioned, and the light source 4 and the detector 18 are located on opposite sides of the partition 20 (Fig. 2). It would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Toshiyuki with a partition in order to prevent the direct optical communication between light source 4 and detector 18 as taught by Paritsky (Col 2, 58-63).

Re claim 2, Toshiyuki discloses a light source 4 emitting infrared rays and a photodetector 5 to detect said infrared rays (Abs.).

Re claim 3, Toshiyuki teaches a window 17 for passing light emitted from the light source 4 and a window 18 for passing light reflected off the reflector mirror 2 to the photodetector 5 (Fig. 1).

Re claims 7 and 8, Toshiyuki discloses the claimed invention but fails to teach a shield plate. Paritsky discloses a sensor (Fig. 2) comprising a partition 20 arranged between a light source 4 and a detector 18, the partition extending from a bottom wall partially toward the top of the package. It would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Toshiyuki with a partition in order to prevent the direct optical communication between light source 4 and detector 18 as taught by Paritsky (Col 2, 58-63). Furthermore, it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

Claims 4-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Toshiyuki and Paritsky as applied to claim 3 above, and further in view of Weckstrom et al. (US 2003/0177814).

Re claim 4, Toshiyuki and Paritsky disclose the claimed invention according to claim 3 except for a band-pass filter. Weckstrom et al. discloses a gas analyzer (Fig. 1) comprising a band pass-filter 10. It would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the combination taught by Toshiyuki and Paritsky with a band-pass filter in order to prevent substantially all radiation from reaching the detector and passing only desired wavelengths.

Re claim 5, Toshiyuki discloses the claimed invention wherein the light source 4 and the photodetector 5 are mounted on a single circuit chip 13.

Re claim 6, Tohiyuiki discloses the claimed invention except for mounting the light source 4 and the photodetector 5 on separate circuit chips. It would have been an obvious matter of design choice to mount the source 4 and detector 5 on separate chips, since applicant has not disclosed that separate chips solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a single circuit chip.

### **Response to Arguments**

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus H. Taningco whose telephone number is (571) 272-1848. The examiner can normally be reached on M - F 8:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MT

  
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